



California Regional Water Quality Control Board

San Francisco Bay Region



Terry Tamminen
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
1515 Clay Street, Suite 1400, Oakland, California 94612
Phone (510) 622-2300 • FAX (510) 622-2460

Arnold Schwarzenegger
Governor

Date: AUG 18 2004
File No.: 2169.6028

CERTIFIED MAIL NO. 70032260000212621871
RETURN RECEIPT REQUESTED

Mr. Larry Appleton
Manager of Engineering
& Environmental Affairs
Hanson Aggregates, Mid-Pacific Inc.
3000 Busch Road
Pleasanton, CA 94566-0808

RE: San Francisco Sand Yard - Mandatory Minimum Penalty assessed under Water Code
Section 13385 (h) and (i)

Dear Mr. Appleton,

Enclosed is Complaint No. R2-2004-0051. The Complaint alleges that there were a total of twenty-eight violations of the San Francisco Sand Yard's Waste Discharge Requirements Order No. 98-062 during the period between August 1, 2002, and March 31, 2003. There were total suspended solids daily maximum violations on August 22 and 29, September 5, 11, 19, 23, 24, 26 and 30, October 1, 2, 10 and 24, November 4, December 3, 12, 13, 23, 27, 2002, and January 8, 9, 20, and 21, February 3, 2003; total suspended solids monthly average violations on September 30, October 31, and December 30, 2002, and January 31, 2003.

Twenty-seven of the twenty-eight violations are subject to mandatory penalties under Section 13385 (h) and (i) of the California Water Code for a total mandatory minimum penalty of \$81,000.

I plan to bring this matter to the Water Board at its September 15, 2004, meeting. You have three options:

1. You can appear before the Board at the meeting to contest the matter. Written comments are due by August 16, 2004. At the meeting the Board may: impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or, refer the case to the Attorney General to have a Superior Court consider imposition of a penalty.

Preserving, enhancing and restoring the San Francisco Bay Region's waters for over 50 years

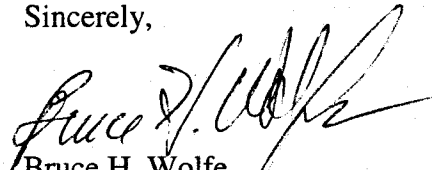


Recycled Paper

2. You can waive the right to a hearing by signing the attached waiver form and checking the first box. There will be no hearing on this matter, provided no significant public comment is received by Board staff during the comment period. By checking the first box and signing the waiver you agree to pay the liability within 30 days after the signed waiver becomes effective.
3. You can waive the right to a hearing and agree to undertake a Supplemental Environmental Project (SEP) by signing the waiver and checking the second box. There will be no hearing on this matter, provided no significant public comment is received by Board staff during the comment period. By checking the second box and signing the waiver, you agree to complete an SEP in lieu of paying a suspended amount of up to \$48,000 of the penalty and remit the balance of the fine to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the signed waiver becomes effective. Note that the SEP must be acceptable to the Executive Officer of the Board. If the Executive Officer determines that either, the SEP proposal is not acceptable, or the SEP is not adequately completed within the approved time schedule, you will be required to pay the suspended liability within 30 days of notification by the Executive Officer.

For options 2 or 3 above, you are requested to mail and fax a copy of the signed waiver to the attention of Joseph Ernest at (510) 622-2460 no later than August 16, 2004, and if you intend to complete an SEP, a preliminary proposal must accompany the waiver for approval of concept. If you have any questions regarding this matter, please contact Joseph Ernest of my staff at (510) 622-2456 or email address je@rb2.swrcb.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Enclosure: Complaint No. R2-2004-0051

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2004-0051

**MANDATORY MINIMUM PENALTY
IN THE MATTER OF
HANSON AGGREGATES (SAN FRANCISCO SAND YARD)
SAN FRANCISCO COUNTY**

This complaint to assess mandatory minimum penalties (MMPs) pursuant to Water Code Sections 13385 (h) and (i), is issued to the Hanson Aggregates, San Francisco Sand Yard, (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order No. 98-062 (NPDES No. CA0030139).

The Executive Officer finds the following:

1. On December 16, 1998, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 98-062, for the Discharger, to regulate discharges of waste from the discharger's facility.
2. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.
3. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
4. Water Code Section 13385(i) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in any six consecutive months:
 - a. Violates a waste discharge requirement effluent limitation.
 - b. Fails to file a report pursuant to Section 13260.
 - c. Files an incomplete report pursuant to Section 13260.
 - d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. Water Code Section 13385(l) allows the Water Board, with the concurrence of the discharger, to direct a portion of the MMP amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The discharger may undertake an SEP up to the full amount of the MMP for liabilities less than or equal to \$15,000. If the MMP amount

exceeds \$15,000, the MMP amount that may be expended on a SEP may not exceed \$15,000 plus 50 percent of the MMP amount that exceeds \$15,000.

6. Effluent Limitations

Order No. 98-062 includes the following effluent limitations:

B. Effluent Limitations

b.1. The effluent shall not exceed the following limits:

Total Suspended Solids daily maximum of 45 mg/l and monthly average of 30 mg/l.

7. Summary of Effluent Limit Violations

According to monitoring reports received, there were a total of 28 effluent limit violations of the Waste Discharge Requirements Order No. 98-062 during the period between August 1, 2002, and March 31, 2003.

8. Total Suspended Solids is a Group I pollutant

During the period between August 1, 2002, and March 31, 2003, the Discharger had twenty-eight violations of its effluent discharge limits. These are: total suspended solids daily maximum violations on August 22 and 29, September 5, 11, 19, 23, 24, 26 and 30, October 1, 2, 10 and 24, November 4, December 3, 12, 13, 23, 27, 2002, and January 8, 9, 20, and 21, February 3, 2003; total suspended solids monthly average violations on September 30, October 31, and December 30, 2002, and January 31, 2003. The details of these violations are presented in Table 1.

9. The twelve total suspended solids daily maximum effluent limit violations on August 22, September 5, 19, 23, 24, 26, and October 1, 24, and December 12, 13, and 23, 2002; and the total suspended solids monthly average effluent limit violations on September 30, 2002, are serious violations because total suspended solids is a Group I pollutant and the violations exceed the effluent limitation by 40 percent or more. All serious violations are subject to an MMP of \$3,000 penalty under Section 13385 (h) (1), for a total MMP of \$36,000 for the 12 violations.
10. The suspended solids daily maximum effluent limit violation on August 29, 2002 is not a serious violation under Section 13385 (h) (1). The violation is not subject to an MMP under Section 13385 (i) as there have not been four or more violations within the preceding 180 days.
11. The twelve total suspended solids daily maximum effluent limit violations on September 11, 30, October 2, and 10, November 4, December 3, and 27, 2002; and January 8, 9, 20 and 21, and February 3, 2003; and the three total suspended solids monthly average effluent limit violations on October 31, and December 31, 2002; and January 31, 2003 are not serious violations under Section 13385 (h) (1). The violations are subject to an MMP under Section 13385 (i) as there have been four or more violations within the respective preceding 180 days. The MMP for each violation under Section 13385 (i) is \$3,000, for a total MMP of \$45,000 for these 15 violations.

12. Water Code Exception

Water Code Section 13385(j) provides some exceptions related to the assessment of MMPs for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.

13. MMP Assessment

The MMP for the 12 serious effluent limit violations and the 15 non-serious effluent limit violations is \$81,000. The total MMP amount for this Complaint is \$81,000.

14. Suspended MMP Amounts

Instead of paying the full penalty amount, the Discharger may spend an amount of up to \$48,000 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

15. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in one of the following categories:

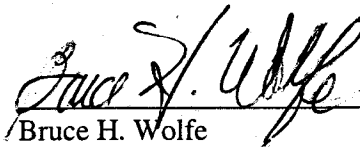
1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; and
4. Environmental education.

HANSON AGGREGATES (SAN FRANCISCO YARD) IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of \$81,000.
2. The Water Board will hold a hearing on this Complaint on September 15, 2004, unless the Discharger waives the right to a hearing by signing the attached waiver form and checks the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty of \$81,000 within 30 days after the signed waiver becomes effective; or,
 - b) Propose an SEP in an amount equivalent to a maximum \$48,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$81,000.
3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by August 16, 2004 to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be

provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.

4. The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Regional Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.


Bruce H. Wolfe
Executive Officer

July 29, 2004
Date

Attachments: Standard criteria and reporting requirement for supplemental environmental project

WAIVER

(The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

- ☐ Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2004-0051 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.
- ☐ Waiver of the right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2004-0051, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$3,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer.

 Name (print)

 Signature

 Date

 Title/Organization

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
MARCH 2003**

**STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

A. BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Regional Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Regional Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Board's Executive Officer. The Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Regional Board web site:

<http://www.swrcb.ca.gov/rwqcb2/>

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

B. GENERAL SEP QUALIFICATION CRITERIA

All SEPs approved by the RWQCB must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Board's Executive Officer:
 - Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains. Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.
 - Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.
 - Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.
 - Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

C. APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of an SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

Generally SEP proposals are submitted along with waivers of hearings. In such a case the approval of a proposal will not become effective until the waiver goes into effect, i.e. at the close of the public comment period. There will not be a public hearing on the SEP proposal unless new and significant information becomes available after the close of the public comment period that could not have been presented during the comment period.

If the Discharger needs additional time to prepare an SEP it may waive its right to a hearing within 30 days of the issuance of a Complaint (and retain its right to a hearing to contest the Complaint at a later date), and request additional time to prepare an SEP proposal. Any such time extension needs to be approved by Board staff.

D. REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

E. FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and
- Overall evaluation of the SEP.

F. THIRD PARTY PROJECT OVERSIGHT

For SEPs of more than \$10,000 the Board requires there to be third party oversight of the project. The Regional Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight, or a Discharger may choose an alternative third party acceptable to the Executive Officer. If ABAG is chosen, six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). If an alternative third party is chosen, the amount of funds directed to the SEP, as opposed to oversight, shall not be less than 94% of the total SEP funding. For projects greater than \$10,000 the Discharger shall indicate when submitting the information required under C. above whether ABAG or an alternative third party oversight entity will be used.